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Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

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In the Matter of

Request to Update Default Compensation Rate for
Dial-Around Calls from PayphonesWC Docket No. 03-225
RM No. 10568**ORDER AND NOTICE OF PROPOSED RULEMAKING****Adopted: October 28, 2003****Released: October 31, 2003****Comment Date: 30 days after Federal Register Publication of this Notice****Reply Comment Date: 45 days after Federal Register Publication of this Notice**

By the Commission:

I. INTRODUCTION AND SUMMARY

1. On August 29, 2002, the American Public Communications Council ("APCC") filed a Request that the Commission Issue a Notice of Proposed Rulemaking (or in the alternative, Petition for Rulemaking), requesting that the Commission issue a notice of proposed rulemaking to consider a new default compensation rate for dial-around calls from payphones.¹ On September 4, 2002, the RBOC Payphone Coalition (BellSouth Public Communications, Inc., SBC Communications, Inc., and the Verizon telephone companies) filed a petition also requesting that the Commission establish a new dial-around compensation rate.² Petitioners contend that, due to a dramatic reduction in the volume of payphone calling, the per-call costs of a "marginal payphone" have increased substantially since the *Third Report and Order*, requiring a revisitation of the \$.24 rate. On September 30, 2002, the Wireline Competition Bureau sought comment on the petitions.³ In this proceeding, we grant petitions for rulemaking filed by payphone service providers ("PSPs")

¹ Request that the Commission Issue a Notice of Proposed Rulemaking (Or, in the Alternative, Petition for Rulemaking) to Update Dial-Around Compensation Rate (filed Aug. 29, 2002) ("APCC Petition"). On August 30, 2002, APCC filed a corrected copy of its petition.

² Petition for Rulemaking to Establish Revised Per-Call Payphone Compensation Rate (filed Sept. 4, 2002) ("RBOC Petition"). We refer to APCC and the RBOC Payphone Coalition collectively as "Petitioners."

³ See *Wireline Competition Bureau Seeks Comment on Petitions for Rulemaking Regarding Payphone Dial-Around Compensation Rate*, RM No. 10568, Public Notice, DA 02-2381 (Sept. 30, 2002).

and request comment on whether to modify the default rate of payphone compensation for "dial-around" calls set forth in section 64.1300(c) of our rules.⁴

2. This action reflects our continued efforts to implement the requirements of section 276 of the Act, as amended ("Act"), which directs the Commission to "promote the widespread development of payphone services to the benefit of the general public."⁵⁶ In pursuit of this mandate, section 276(b)(1) also directs the Commission to establish "a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed call."⁷ More than four years ago, the Commission set a default compensation rate of \$.24 per call for "dial-around" calls made from payphones.⁸ We now seek comment on whether this rate still fairly compensates PSPs or whether a change in the rate is warranted.

II. BACKGROUND

3. In a series of orders starting in 1996, the Commission promulgated pay telephone service regulations to implement section 276 of the Act, as amended by the Telecommunications Act of 1996 ("the 1996 Act").⁹ Among the provisions of section 276 addressed in these orders is section 276(b)(1)(A), which specifically directs the Commission to establish a plan to ensure that PSPs are "fairly compensated" for every completed call.¹⁰ The statute does not prescribe a particular method for accomplishing this task, other than to specify that such action shall "promote competition among payphone service providers and

⁴ 47 C.F.R. § 64.1300 (c).

⁵ 47 U.S.C. § 276 (b) (1).

⁶ 47 U.S.C. § 276 (b) (1).

⁷ 47 U.S.C. § 276 (b)(1)(A).

⁸ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC 2545 (1999).

⁹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716, 6721 (1996) (hereinafter *First Payphone NPRM*); Report and Order, 11 FCC Rcd 20541 (1996) (hereinafter *First Report and Order*); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (hereinafter *First Reconsideration Order*), *aff'd in part and remanded in part sub nom. Illinois Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), *clarified on reh'g*, 123 F.3d 693 (D.C. Cir. 1997), *cert. denied sub nom. Virginia State Corp. Comm'n v. FCC*, 523 U.S. 1046 (1998) (hereinafter *Illinois*); Second Report and Order, 13 FCC Rcd 1778 (1997), *aff'd in part and remanded in part sub nom. MCI v. FCC*, 143 F.3d 606 (D.C. Cir. 1998) (hereinafter *MCI*); Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999) (hereinafter *Third Report and Order*), reconsideration petitions pending, *aff'd sub nom. American Pub. Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000) (hereinafter *American*); Second Order on Reconsideration, 16 FCC Rcd 8098 (2001) (hereinafter *Second Reconsideration Order*); Third Order on Reconsideration and Order on Clarification, 16 FCC Rcd 20922 (2001) (hereinafter *Third Reconsideration Order*); Pub. L. No. 104-104, 110 Stat. 56 (1996)(codified at 47 U.S.C. § 276).

¹⁰ See 47 U.S.C. § 276(b)(1)(A). The statute directs the Commission "to establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation." *Id.*

promote the widespread deployment of payphone services to the benefit of the general public[.]”¹¹

4. In implementing section 276(b)(1)(A), the Commission has relied wherever feasible on a market-based, deregulatory mechanism for payphone compensation, as required by both section 276 and the generally pro-competitive goals of the 1996 Act. In the case of certain types of calls broadly referred to as "dial-around" calls,¹² however, the Commission recognized that various statutory, technological, and economic factors inhibited the development of a fully deregulated means of providing fair compensation. For example, the Commission determined that, because section 226 of the Act prohibits PSPs from blocking access code calls to interexchange carriers (IXCs),¹³ PSPs were deprived of market leverage to negotiate fair compensation for the delivery of such calls to IXCs.¹⁴ Unlike other aspects of payphone service, such as the local coin rate, the Commission found it necessary to adopt a more regulatory approach to ensure that PSPs are fairly compensated for these types of calls. The Commission, therefore, established a default per-call compensation amount to be paid by IXCs¹⁵ to PSPs for each and every dial-around call, in the absence of individual agreements.¹⁶

5. Based upon its determination that the payphone market has low entry and exit barriers and likely would become increasingly competitive, the Commission in the *First Report and Order* chose a market-based, rather than a cost-based, default compensation amount.¹⁷ Because a purely market-based approach was not then feasible, the Commission decided that compensation should be based on a market surrogate. Concluding that the costs of coin calls and dial-around calls were "similar,"¹⁸ the Commission set a PSP's default

¹¹ 47 U.S.C. § 276(b)(1). See *First Report and Order*, 11 FCC Rcd at 20566, para. 48; *Second Report and Order*, 13 FCC Rcd at 1789, para. 24.

¹² There are typically three types of calls made from payphones: coin calls; coinless calls using the long distance carrier selected by the payphone owner (referred to as the "presubscribed carrier"); and so-called "dial-around" calls, where the caller makes a coinless call using a carrier other than the payphone's presubscribed long distance carrier.

¹³ See Telephone Operator Consumer Services Improvement Act (TOCSIA), Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226). The effect of this statutory provision is to prohibit PSPs from blocking outgoing 800 and other 8XX calls, including toll-free subscriber calls.

¹⁴ *First Report and Order*, 11 FCC Rcd at 20567, para. 49.

¹⁵ The Commission determined in the *First Report and Order* that the primary economic beneficiaries of access-code and toll-free subscriber calls, the IXCs, should be responsible for compensating the PSPs. *Id.* at 20584, para. 83. For purposes of this *NPRM*, the term "IXC" also includes a LEC when the LEC provides a toll-free subscriber service or a service accessed by access codes, see *id.* at 20584 n.293, and switched-based resellers that are the primary economic beneficiaries of coinless payphone calls transferred to their switches. See *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 03-235, at para. 27 (rel. Oct. 3, 2003); Errata (WCB, rel. Oct. 23, 2003).

¹⁶ See *First Report and Order*, 11 FCC Rcd at 20567-68, paras. 50-51.

¹⁷ *Id.* at 20541, para. 70; *id.* at 20568, para. 52.

¹⁸ *Id.* at 20577, para. 70.

dial-around compensation rate (to be paid in the absence of a negotiated agreement) equal to the amount the particular PSP charges for local coin calls.¹⁹ Because it found that fully competitive conditions for coin calling did not yet exist, the Commission established a uniform interim rate of dial-around compensation of \$.35 per call, which was the local coin call price in several states where payphone call prices had been deregulated.²⁰ The Commission also concluded in the *First Report and Order* that use of a purely incremental or marginal cost standard for all calls would be inadequate because PSPs would be unable to recover a reasonable share of the joint and common costs of the payphone.²¹

6. On review, the court of appeals concluded, *inter alia*, that the Commission had not adequately justified its conclusion that the costs of local coin calls are similar to those of toll-free and access-code calls, and it remanded the matter to the Commission.²²

7. In the *Second Report and Order*, the Commission responded to the court's remand. The Commission affirmed its decision in the *First Report and Order* to use a market-based, interim compensation amount for compensable calls.²³ Responding to the court's findings that it had failed to address information in the record regarding cost disparities between coin calls and dial-around calls, the Commission concluded that the appropriate per-call compensation amount for dial-around calls was the market-based local coin price, adjusted for the differences in the costs of providing coin calls and dial-around calls.²⁴ The Commission examined the underlying cost components and found that the cost to PSPs of providing dial-around calls from a "marginal," or low traffic, payphone location²⁵ was \$.066 less than the cost of providing coin calls.²⁶ The Commission therefore reduced the market coin call price of \$.35 by \$.066 to arrive at a default per-call compensation amount of \$.284.²⁷ The Commission also concluded that this default amount would be in effect for two years, until October 6, 1999.²⁸ After two years, the per-call default amount would be the market-based local coin price, less \$.066, representing the net avoided costs of a dial-around call.²⁹

8. On review, the court remanded portions of the *Second Report and Order*. It held that the Commission did not adequately justify the derivation of a compensation amount for

¹⁹ *Id.* at 20577-578, paras. 70-71.

²⁰ *Id.* at 20577-578, paras. 70-72.

²¹ *Id.* at 20576, para. 68.

²² *Illinois*, 117 F.3d at 564.

²³ *Second Report and Order*, 13 FCC Rcd at 1789, para. 24.

²⁴ *Id.* at 1796, para. 41.

²⁵ *Id.* at 1797-1801, para. 42.

²⁶ *Id.* at 1828, para. 117.

²⁷ *Id.* at 1830, para. 121.

²⁸ *Id.* at 1828, para. 117.

²⁹ *Id.* at 1828, para. 117.

coinless payphone calls. In particular, the court held that the Commission had failed to explain why a market-based compensation amount for coinless calls could be derived by subtracting avoided costs from a market price charged for coin calls.³⁰

9. In response to this remand, the Commission set a default compensation rate of \$0.24 per call for a three-year period beginning April 21, 1999. In the *Third Report and Order*, the Commission switched from the top-down "market-based" methodology reflected in its prior orders to a "bottom-up" methodology to establish the default per-call compensation rate.³¹ Pursuant to the bottom-up methodology, the Commission calculated an average fully distributed cost for each type of call such that the default price for each type of call is set equal to the fully distributed cost of that type of call.³²

10. The Commission determined that the joint and common costs of payphone operations should be recovered in an equal amount from each and every call.³³ Joint and common costs are those that do not vary with the relative number of coin and coinless calls at the payphone. Thus, for example, coin collection costs are not joint and common costs because they vary depending on the number of coin calls placed at the payphone. The Commission identified five categories of joint and common costs for payphones: capital expenditures; line charge costs; maintenance costs; sales, general and administrative ("SG&A") costs; and FLEX ANI costs. The Commission determined that the sum of those costs was \$101.29 per payphone per month.

11. To translate the total monthly cost of \$101.29 per payphone into a per call rate, the Commission affirmed its finding in the *Second Report and Order* that monthly costs should be divided by the total number of calls made from a "marginal payphone," which the Commission defined as one "where the payphone operator is able to just recoup its costs, including earning a normal rate of return on the asset, but is unable to make payments to the location provider."³⁴ The Commission concluded that the use of a marginal payphone, as opposed to an "average payphone," was "necessary to fairly compensate PSPs and ensure the widespread deployment of payphones."³⁵ It found that "basing the default compensation amount on an average payphone location would cause many payphones with less-than-average call volumes to become unprofitable," which in turn would lead to the removal of existing payphones in contravention of the statutory mandate to ensure their "widespread

³⁰ *MCI*, 143 F.3d at 608.

³¹ *Third Report and Order*, 14 FCC Rcd at 2545.

³² *Id.* at 2545, para. 72. This is a "bottom-up" methodology because the price of dial-around or compensable calls is calculated by "building-up" the costs of these calls from a starting point of zero using costs, instead of "building-down" from a starting point of the price of coin calls using avoided costs.

³³ While the compensation rate should also recover the marginal cost of placing a dial-around call, the Commission concluded that no such costs existed or that such costs were so small as to be insignificant. *Id.* at 2631, para. 190.

³⁴ *Id.* at 2607, para. 139.

³⁵ *Id.* at 2608, para. 141.

deployment.”³⁶ Because the bottom-up methodology would assure fair compensation for the overwhelming majority of payphones, the Commission concluded that the per-call compensation methodology adopted in the *Third Report and Order* would not negatively affect the current deployment of payphones and thus would promote Congress's goal of widespread deployment of payphones.

12. Relying on data submitted by the RBOC Coalition, the Commission determined that the typical “marginal” payphone at the time of the *Third Report and Order* had a call volume of 439 calls per month.³⁷ Dividing \$101.29 by 439 calls yields a per call figure of \$0.231. The Commission added \$0.009 to this figure to provide interest to PSPs to compensate them for the four month time delay inherent in the dial-around compensation process for a total of \$.24 per call.³⁸

13. The Commission therefore prescribed a default dial-around compensation rate of \$.24 per call to remain in effect until at least January 31, 2002. The Commission stated its belief that, in the future, targeted call blocking would play a significant role in bridging the gap between Congress's and the Commission's goal of a deregulatory solution and the need to ensure fair compensation. The Commission also stated, however, that if, by January 31, 2002, parties have not invested the time, capital, and effort necessary to remove the technological and other impediments to a market-based resolution, parties may petition the Commission regarding the default compensation amount.³⁹

14. On June 16, 2000, the court affirmed the default rate of \$0.24, concluding that the Commission's bottom-up calculation of the default payphone compensation rate was a reasonable exercise of its jurisdiction.⁴⁰

III. PETITIONS FOR RULEMAKING

15. As noted above, the Commission stated in the *Third Report and Order* that, after January 31, 2002, the parties may petition the Commission regarding the default compensation amount. According to Petitioners, the ready, affordable access to the network that payphones have historically provided is in jeopardy, largely because the dramatic expansion of wireless services has reduced the overall volume of calls made at payphones.⁴¹ As a result, payphones in growing numbers are being removed from many locations because they no longer have sufficient call volumes to remain economically viable. The RBOCs report that the number of RBOC payphones has fallen by more than 20 percent -- from 1.35

³⁶ *Id.* at 2608-09, para. 141.

³⁷ *Id.* at 2614, para. 151 n.202.

³⁸ *Id.* at 2615, para. 153.

³⁹ *Id.* at 2658, para. 230.

⁴⁰ *American*, 215 F.3d at 51.

⁴¹ RBOC Coalition Comments at 1.

million to 1.06 million -- from February 1999 through August 31, 2001.⁴² APCC, on behalf of its independent payphone service provider membership, also reports a significant decline in the number of deployed payphones. For the overall period from 1998 to March 2001, APCC reports a total decline in payphones of more than 10.5 percent.⁴³ The Commission's most recent *Trends in Telephone Service* report shows that the decline continues unabated.⁴⁴

16. Petitioners assert, therefore, that the time has come to adjust the dial-around compensation rate. According to the cost studies submitted with their petitions, although per-payphone costs have not changed dramatically, falling call volumes have caused a major increase in per-call costs at marginal payphones, which Petitioners' cost studies assert currently average between \$.48 and \$.53 per call.⁴⁵ As a result, Petitioners contend, the current dial-around compensation rate of \$.24 no longer provides cost recovery for PSPs and is therefore no longer adequate to ensure the widespread deployment of payphones. The petitions are opposed by seven parties, all but one of which are IXC's.⁴⁶

IV. DISCUSSION

A. Need for a Rulemaking on the Payphone Compensation Rate

17. Having considered the petitions and the comments and reply comments thereon, we find that it is appropriate to issue this Notice of Proposed Rulemaking in order to determine whether current conditions in the payphone market warrant any change in the default rate of payphone compensation, and if so, what the new default should be. As noted above, the Commission determined in the *Third Report and Order* that, after three years, it would be appropriate to review the default compensation rate if the parties had not by then achieved a market-based resolution of the compensation issue.⁴⁷

18. Given the mandate of section 276 to "ensure that payphone service providers are fairly compensated" and to "promote widespread deployment of payphone service to the benefit of the general public," it is only logical that we should periodically reexamine the per-call compensation rate, especially when underlying industry conditions change. Here, there appears to be no dispute that industry conditions have changed significantly. Payphone usage and deployment are decreasing as the use of wireless services increases.

⁴² RBOC Coalition Comments at 10.

⁴³ APCC Petition at 8.

⁴⁴ *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division (August 2003). As of March 31, 2002, there were 650,423 independently deployed payphones. *Id.* at Table 7.5. By March 31, 2003, the number of independently deployed payphones had fallen to 565,606. *Id.*

⁴⁵ RBOC Coalition Comments at 6-13.

⁴⁶ The non-IXC commenter is the Attorney General of the State of Texas.

⁴⁷ *Third Report and Order*, 14 FCC Rcd at 2648, para. 230. The petitions of APCC and RBOC Payphone Coalition were filed more than four years after the effective date of the \$.24 rate and well after the January 31, 2002 date that the Commission suggested would be an appropriate time for parties to seek review of the rate.

There is also wide agreement that the local coin rate continues to increase, most recently to \$.50 at most payphones.⁴⁸ The point of disagreement concerns the implications of such change for the dial-around compensation rate.

19. Some IXC contend that the default compensation rate should not be changed because to do so would interfere with the operation of market forces, which by themselves are able to determine the appropriate level of payphone deployment.⁴⁹ These IXCs will be afforded an opportunity to demonstrate how PSPs can be effectively compensated in a fully deregulated market, but we note that the IXCs do not assert that they are currently able to implement targeted call blocking, a development which the Commission previously found could justify shifting from a prescribed compensation rate to a negotiated compensation rate.⁵⁰ In fact, one IXC categorically states that it cannot justify investing in targeted call-blocking technology.⁵¹

20. Moreover, we recognize that the current per-call compensation rate is itself the result of government intervention in the payphone market. First, Congress required PSPs to let their callers access any carrier from payphones.⁵² Second, concerns about direct payments for services using 800 numbers at payphones resulted in various limitations on direct payments at the payphone instrument.⁵³ Third, the prohibition on call blocking imposed by TOCSIA impedes PSPs from negotiating market-based compensation.⁵⁴ Thus, the Commission further intervened in the market by prescribing per-call compensation for "dial-around" calls. Although the Commission attempted to set a cost-based compensation rate that would minimize regulatory distortion of the market, when market conditions change, it is incumbent upon us to reexamine the premises of the rate the Commission prescribed.

21. Although most IXCs acknowledge that there have been significant changes in the payphone industry since 1999, they argue that the Commission should defer issuing a

⁴⁸ See, e.g., IDT Comments at 12; Global Crossing Comments at 4.

⁴⁹ ATX Communications, Inc., Business Telecom, Inc., US LEC Corp. ("ATX *et al.*") Comments at 5; IDT Comments at 7; Sprint Comments at 8; WorldCom Comments at 10.

⁵⁰ In the *Third Report and Order*, the Commission noted that, while PSPs are prohibited from blocking dial-around calling, it appears that IXCs may legally decline to accept dial-around calls for which they are unable to negotiate a satisfactory price. The deployment of targeted call-blocking technology seemed to offer a means of transitioning to a negotiated, market-based rate. *Third Report and Order*, 14 FCC Rcd at 2647-48, para. 230. The Commission requested the industry to inform it in the event that technology was developed to allow economical deployment of targeted call blocking. *Id.*

⁵¹ Sprint Comments at 5, fn. 7.

⁵² See 47 U.S.C. § 226.

⁵³ 47 U.S.C. § 226 (c) (1)-(C).

⁵⁴ 47 U.S.C. §§ 226 (e) and 228 (c) (1) (B).

NPRM and should instead initiate a Notice of Inquiry ("NOI") to review our dial-around compensation methodology, and other policy issues,⁵⁵ prior to any attempt to set a rate.

22. We do not believe it is necessary or appropriate to issue a NOI prior to considering a change in the default compensation rate. As APCC points out,⁵⁶ an agency typically issues a NOI when it is uncertain as to its overall policy direction.⁵⁷ If the need for regulation and the type of regulation to be considered are already clear, there is no need for a preliminary NOI. In this case, no NOI is necessary. APCC and the RBOCs have not requested us to adopt rules in a new area or to make rule changes of a kind that we have not previously anticipated. Indeed, section 276 clearly defines our authority, the type of regulations we must prescribe, and the policy direction we must follow.⁵⁸ In the seven years since the 1996 Act was enacted, we have acquired extensive experience in prescribing dial-around compensation rates. We can obtain any additional facts that we need to determine whether we should modify the rate in the course of the rulemaking itself.

23. We also recognize that, unlike carriers subject to tariff regulation, PSPs have no tariff-filing procedure whereby they can initiate a change in the rate. Under the Act, it is the Commission's responsibility to "establish a system of compensation to ensure that PSPs are fairly compensated . . ."⁵⁹ Therefore, and especially in light of the economic issues facing the payphone industry, we are particularly reluctant to incur the delay involved in issuing a preliminary NOI.

24. The remaining issues raised by the advocates of a NOI are methodological and factual issues of the kind that we would normally resolve in a ratemaking proceeding, and that we can resolve here in the course of our rulemaking. In finding it unnecessary to issue a NOI, we do not assert that the IXCs' methodological issues have no merit. Rather, we believe we can resolve all such issues, to the extent that they are relevant to our ratesetting task, in the course of determining what, if any, modifications we should make to the dial-around rate.

B. Request for Comment

⁵⁵ For example, IXCs contend that, prior to considering any rate change, the Commission should issue a NOI in order to redefine the appropriate level of payphone deployment in light of the increasing prevalence of wireless phones. AT&T Comments at 4-8; Sprint Comments at 7-9; WorldCom Comments at 2-18.

⁵⁶ APCC Reply at 7-8.

⁵⁷ See, e.g., *Compulsory Copyright License for Cable Retransmission*, Notice of Inquiry, 2 FCC Rcd 2387, para. 30 (1987); Federal Energy Regulatory Commission, *Accounting for Phase-In Plans*, Notice of Inquiry, 57 Fed. Reg. 13064, 13065 (1992); U.S. Dept. of Commerce, National Telecommunications and Information Administration, *Comprehensive Review of Rate of Return Regulation of the U.S. Telecommunications Industry*, 51 Fed. Reg. 36837, 36840 (1986).

⁵⁸ 47 U.S.C. §§ 276 (b)(1), (1)(A).

⁵⁹ 47 U.S.C. § 276 (b)(1)(A).

25. We institute this proceeding to determine whether a change to the dial-around rate is warranted, and, if so, to determine the amount of the new rate. We invite comments both on the general issue of whether to prescribe a different payphone compensation rate and on the specific issue of the amount of the rate.

26. We seek comment on the cost studies presented in the petitions. We seek comment on whether the methodologies reflected in those studies are consistent with the rate methodology the Commission used in the *Third Report and Order* and whether the cost information presented in those studies accurately represents the costs currently incurred by payphone service providers.⁶⁰ We invite commenting parties to submit additional studies that support or refute the information presented in the APCC and Coalition studies.

27. We tentatively conclude that the methodology the Commission adopted in the *Third Report and Order* is the appropriate methodology to use in reevaluating the default dial-around compensation rate. As noted above, the Commission found in the *Third Report and Order* that a bottom-up methodology based on fully distributed costs and the average monthly⁶¹ call volume at a marginal payphone would assure fair compensation for the overwhelming majority of payphones and would promote Congress's goal of widespread deployment of payphones. The decision to use that methodology was affirmed by the United States Court of Appeals for the D.C. Circuit. We seek comment on this tentative conclusion.

28. We also invite comment on whether the methodology should be modified in any way due to changes in the payphone industry since its adoption. For example, some IXC's argue that, due to the elasticity of the demand for dial-around calling, an increase in the dial-around rate would suppress demand to such an extent as to reduce total revenues, resulting in increased removal of payphones.⁶² APCC and the RBOCs, on the other hand, argue that there is no reason to believe that dial-around calling is highly price-elastic.⁶³ In the *Third Report and Order*, the Commission considered the issue of demand elasticity in determining the appropriate allocation of overhead between dial-around calls and other calls but was unable to reach a firm conclusion.⁶⁴ Thus, elasticity issues bear on both the allocation of overhead and the potential for demand suppression. We seek further comment on the issue

⁶⁰ For example, AT&T argues that APCC's cost study did not follow the methodology of the Commission's *Third Report and Order* with respect to the ascertainment of call volumes at a marginal payphone location. AT&T Comments at 11-15. In particular, AT&T asserts that APCC incorrectly defines marginal payphones solely as those for which no commissions are paid to the location owner. *Id.* at 12. APCC responds that it followed the *Third Report and Order* by excluding payphones for which the premises owner makes a payment to the PSP, as well as payphones for which the PSP pays the premises owner a commission. See APCC Reply, Declaration of Don Wood, para. 7 ("Wood Reply Dec.").

⁶¹ Call volumes are determined on a monthly basis. See *Third Report and Order*, 14 FCC Rcd at 2613-14.

⁶² Global Crossing Comments at 1-6; AT&T Comments at 2, 5-6; IDT Comments at 12; ATX *et al.* Comments at 2; Telstar Comments at 2-3.

⁶³ See Wood Reply Dec., para. 7.

⁶⁴ *Third Report and Order*, 14 FCC Rcd at 2588, para. 102.

of demand elasticity, including the impact of recent increases in the coin calling rate and the cross-elasticity of demand between payphones and wireless telephone service. We invite the submission of any further data that may have become available on these questions. Also, because monthly call volume is a key driver in determining the per-call compensation rate, we seek comment on the efficacy and merit of the use in the APCC and Coalition cost studies of marginal payphone monthly call volumes of 233.9 and 219, respectively.

29. We seek comment on whether the particular inputs the Commission adopted in the *Third Report and Order* for various cost categories continue to be appropriate or whether there are changed conditions that warrant modifications of the particular inputs used. For example, is the depreciation rate used in the *Third Report and Order* still valid? As another example, WorldCom claims that, given the declining payphone base, estimates of capital costs should be based on the price of second-hand payphones.⁶⁵ We invite comment on this and other aspects of the cost studies.

30. We seek comment on whether additional cost categories are needed beyond those identified in the *Third Report and Order*. Are there other cost categories that should be added or modified beyond those on which we relied in the *Third Report and Order*? Specifically, the APCC and Coalition cost studies add an element for collection costs specific to dial-around compensation, and the Coalition study adds an element for uncollectibles.⁶⁶ In the *Third Report and Order*, the Commission declined to include these costs in setting the dial-around rate, finding that the record contained insufficient information to determine the extent to which administration costs vary when the number of coinless calls increases relative to coin calls.⁶⁷ We invite comment on whether there is now an adequate record to justify such an element, and the appropriate amount of such an element.

31. We seek comment on whether and how we should consider the revenues and costs associated with the provision of additional services and activities in conjunction with payphones, such as Internet access or rental of advertising space.⁶⁸ Are these revenues and costs relevant to our marginal payphone analysis, and, if so, how? Is there evidence regarding the extent, if any, of the net contribution to payphone cost recovery resulting from these activities?⁶⁹ If so, we invite parties to supply such evidence with respect to payphones generally and to marginal payphones in particular.

32. Sprint urges us to reconsider adopting a "caller-pays" compensation scheme, in which the caller would deposit coins or other forms of advance payment before making a

⁶⁵ WorldCom Comments at 16.

⁶⁶ RBOC Coalition Comments at 10; APCC Comments at 13-15.

⁶⁷ AT&T and others argue that the *Third Report and Order* methodology precludes the inclusion of an element for bad debt. AT&T Comments at 17-18; ATX *et al.* Comments at 14-15; IDT Comments at 15-16.

⁶⁸ See IDT Comments at 16; WorldCom Comments at 11.

⁶⁹ APCC suggests that such contribution is minimal. APCC Reply at 21-23.

dial-around call.⁷⁰ In the *Third Report and Order*, the Commission noted that some economists would argue that a caller-pays methodology “forms the basis for the purest market-based approach.”⁷¹ It nonetheless rejected this approach based on evidence that Congress disapproved of a caller-pays methodology.⁷² For this reason, we tentatively conclude that we should not adopt a “caller-pays” methodology. We seek comment on this tentative conclusion.

33. Nevertheless, we seek comment on whether circumstances have changed such that it is now appropriate to reconsider a caller-pays approach to payphone compensation.⁷³ Consumers using dial-around services from payphones may be billed by their interexchange carriers at rates higher than both the default compensation rate and the local coin call rate. Thus, the convenience of coinless calling may come at a high price to the consumer. We ask parties to provide information about what service providers charge customers for dial-around and other coinless payphone services. More generally, we seek comment on how we should analyze the costs and benefits of our policy of prescribing a dial-around compensation rate to be paid by service providers to payphone operators in lieu of a caller-pays system. Finally, we seek comment on our authority to allow advanced consumer payment for use of payphones. In particular, does section 226(e) permit us to conclude that we need not prescribe compensation apart from advance payment by consumer? If so, what factual findings or policy goals would support such a conclusion?

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

34. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁷⁴ the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (“*Notice*”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided above in Section B. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁷⁵ In addition, the *Notice*

⁷⁰ Sprint Comments at 5-7.

⁷¹ *Third Report and Order*, 14 FCC Rcd at 2597, para. 115.

⁷² *Id.*; see also 47 U.S.C. § 226(e) (“The Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones.”).

⁷³ In the *Third Report and Order*, the Commission concluded that it should monitor the advance of call blocking technology and other marketplace developments before reconsidering a caller-pays approach. *Third Report and Order*, 14 FCC Rcd at 2597-98, para. 115.

⁷⁴ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁷⁵ See 5 U.S.C. § 603(a).

and IRFA (or summaries thereof) will be published in the Federal Register.⁷⁶ In particular, we seek comment on whether changes are appropriate in the default rate of dial-around compensation paid to payphone service providers pursuant to 47 U.S.C. 276. We also seek support and justification for the costs associated with dial-around calling from payphones and the methodology for determining the default rate of dial-around compensation.

1. Need for, and Objectives of, the Proposed Rules

35. In this proceeding, we seek comment on whether changes are appropriate in the default rate of dial-around compensation paid to payphone service providers pursuant to 47 U.S.C. 276, Public Law No. 104-104, 110 Stat. 56 (1996). We find that a reexamination and opportunity for public comment on modifying the current rate is appropriate in light of the passage of more than three years since the last rate change took effect.

2. Legal Basis

36. This *Notice* is adopted pursuant to sections 1, 2, 4(i)-(j), 201, 226 and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201, 226 and 276 and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216, of the Commission's rules, 47 C.F.R. §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216.

⁷⁶

See id.

3. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

37. The RFA directs agencies to provide a description of, and an estimate of the number of small entities that may be affected by the rules proposed herein, where feasible.⁷⁷ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are more appropriate to its activities.⁷⁹ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁸⁰

38. We have included small incumbent LECs in this initial RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."⁸¹ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.⁸² We have therefore included small incumbent LECs in this initial RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

39. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.⁸³ According to the most recent *Telephone Trends Report* data, 1,337

⁷⁷ 5 U.S.C. § 604(a)(3).

⁷⁸ 5 U.S.C. § 601(6).

⁷⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

⁸⁰ 5 U.S.C. § 632.

⁸¹ 5 U.S.C. § 601(3).

⁸² See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

⁸³ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310.

incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.⁸⁴ Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305, alone or in combination with affiliates, have more than 1,500 employees.⁸⁵ Consequently, we estimate that 1,032 or fewer providers of local exchange service are small entities that may be affected by the rules and policies that may be adopted herein.

40. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.⁸⁶ According to the Commission's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.⁸⁷ Of these 458 companies, an estimated 151 have 1,500 or fewer employees and 151, alone or in combination with affiliates, have more than 1,500 employees.⁸⁸ Consequently, the Commission estimates that fewer than 458 providers of competitive local exchange service are small entities that may be affected by the rules and policies proposed herein.

41. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a small entities size standard specifically applicable to competitive access providers (CAPS). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.⁸⁹ According to the Commission's most recent *Telephone Trends Report* data, 609 CAPs or competitive local exchange carriers and 35 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.⁹⁰ Of these 609 competitive access providers and competitive local exchange carriers, an estimated 458 have 1,500 or fewer employees and 151, alone or in combination with affiliates, have more than 1,500 employees.⁹¹ Of the 35 other local exchange carriers, an estimated 34 have 1,500 or fewer employees and one, alone or in combination with affiliates, have more than 1,500 employees.⁹² Consequently, the Commission estimates that there are 458 or fewer small

⁸⁴ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (Aug. 2003) (hereinafter Telephone Trends Report).

⁸⁵ *Id.*

⁸⁶ 13 C.F.R. § 121.201, NAICS code 513310.

⁸⁷ Telephone Trends Report, Table 5.3.

⁸⁸ *Id.*

⁸⁹ 13 C.F.R. § 121.201, NAICS code 513310.

⁹⁰ Telephone Trends Report, Table 5.3.

⁹¹ *Id.*

⁹² *Id.*

entity CAPS and 34 or fewer other local exchange carriers that may be affected by the rules and policies proposed herein.

42. *Local Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.⁹³ According to the Commission's most recent *Telephone Trends Report* data, 133 companies reported that they were engaged in the provision of local resale services.⁹⁴ Of these 133 companies, an estimated 127 they have 1,500 or fewer employees and six, alone or in combination with affiliates, have more than 1,500 employees.⁹⁵ Consequently, the Commission estimates that there are 127 or fewer local resellers are small entities that may be affected by the rules and policies proposed herein.

43. *Toll Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.⁹⁶ According to the Commission's most recent *Telephone Trends Report* data, 625 companies reported that they were engaged in the provision of toll resale services.⁹⁷ Of these 625 companies, an estimated 590 have 1,500 or fewer employees and 35, alone or in combination with affiliates, have more than 1,500 employees.⁹⁸ Consequently, the Commission estimates that there are 590 or fewer toll resellers are small entities that may be affected by the rules and policies proposed herein.

44. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a small entities size standard specifically applicable to payphone service providers (PSPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such an entity is small if it has 1,500 or fewer employees.⁹⁹ According to the Commission's most recent *Trends in Telephone Service* data, 761 companies reported that they were engaged in the provision of payphone services.¹⁰⁰ Of these 761 payphone service providers, an estimated 757 have 1,500 or fewer employees and four, alone or in combination with affiliates, have more than 1,500 employees.¹⁰¹ Consequently, the Commission estimates that there are 757 or fewer PSPs are small entities that may be affected by the rules and policies proposed herein.

⁹³ 13 C.F.R. § 121.201, NAICS code 513330.

⁹⁴ Telephone Trends Report, Table 5.3.

⁹⁵ *Id.*

⁹⁶ 13 C.F.R. § 121.201, NAICS code 513330.

⁹⁷ Telephone Trends Report, Table 5.3.

⁹⁸ *Id.*

⁹⁹ 13 C.F.R. § 121.201, NAICS code 513310.

¹⁰⁰ Telephone Trends Report, Table 5.3.

¹⁰¹ *Id.*

45. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small entities size standard specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁰² According to the most recent *Telephone Trends Report* data, 261 carriers reported that their primary telecommunications service activity was the provision of interexchange services.¹⁰³ Of these 261 carriers, an estimated 223 have 1,500 or fewer employees and 38, alone or in combination with affiliates, have more than 1,500 employees.¹⁰⁴ Consequently, we estimate that there are 223 or fewer small entity interexchange carriers that may be affected by the rules and policies proposed herein.

46. *Operator Service Providers.* Neither the Commission nor the SBA has developed a small entities size standard specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁰⁵ According to the Commission's most recent *Telephone Trends Report* data, 23 companies reported that they were engaged in the provision of operator services.¹⁰⁶ Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one, alone or in combination with affiliates, have more than 1,500 employees.¹⁰⁷ Consequently, the Commission estimates that there are 22 or fewer local resellers which are small entities that may be affected by the rules and policies proposed herein.

47. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁰⁸ According to the Commission's most recent *Telephone Trends Report* data, 37 companies reported that they were engaged in the provision of prepaid calling cards.¹⁰⁹ Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one, alone or in combination with affiliates, had more than 1,500 employees.¹¹⁰ Consequently, the Commission estimates that there are 36 or fewer local resellers are small entities that may be affected by the rules and policies proposed herein.

¹⁰² 13 C.F.R. § 121.201, NAICS code 513310.

¹⁰³ Telephone Trends Report, Table 5.3.

¹⁰⁴ *Id.*

¹⁰⁵ 13 C.F.R. § 121.201, NAICS code 513310.

¹⁰⁶ Telephone Trends Report, Table 5.3.

¹⁰⁷ *Id.*

¹⁰⁸ 13 C.F.R. § 121.201, NAICS code 513330.

¹⁰⁹ Telephone Trends Report, Table 5.3.

¹¹⁰ *Id.*

48. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.¹¹¹ According to the Commission's most recent *Telephone Trends Report* data, 34 carriers reported that they were engaged in the provision of satellite services.¹¹² Of these 34 carriers, an estimated 29 have 1,500 or fewer employees and five, alone or in combination with affiliates, have more than 1,500 employees.¹¹³ Consequently, the Commission estimates that there are 34 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

49. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a small entities size standard specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.¹¹⁴ According to the Commission's most recent *Telephone Trends Report* data, 92 carriers reported that they were engaged in the provision of "Other Toll Services."¹¹⁵ Of these 92 carriers, an estimated 82 have 1,500 or fewer employees and ten, alone or in combination with affiliates, have more than 1,500 employees.¹¹⁶ Consequently, the Commission estimates that there are 82 or fewer small business "Other Toll Carriers" that may be affected by the rules and policies proposed herein.

50. *Wireless Service Providers.* The SBA has developed a size standard for wireless small businesses within the two separate categories of Paging or Cellular and Other Wireless Telecommunications. Under those SBA size standards, such a business is small if it has 1,500 or fewer employees.¹¹⁷ According to the Commission's most recent *Telephone Trends Report* data, 1,761 companies reported that they were engaged in the provision of wireless service.¹¹⁸ Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586, alone or in combination with affiliates, have more than 1,500 employees. Consequently, we estimate that there are 1,175 or fewer small wireless service providers that may be affected by the rules and policies proposed herein.

¹¹¹ 13 C.F.R. § 121.201, NAICS code 513340.

¹¹² Telephone Trends Report, Table 5.3.

¹¹³ *Id.*

¹¹⁴ 13 C.F.R. § 121.201, NAICS code 513310.

¹¹⁵ Telephone Trends Report, Table 5.3.

¹¹⁶ *Id.*

¹¹⁷ 13 C.F.R. § 121.201, NAICS code 513322.

¹¹⁸ Telephone Trends Report, Table 5.3.

51. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹¹⁹ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹²⁰ These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.¹²¹ No small businesses within the SBA-approved small business size standard bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.¹²² On March 23, 1999, the Commission reaucted 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 reauction, and the 29 winning bidders in the 2001 reauction, for a total of 260 small entity PCS providers as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies proposed herein.

52. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the three previous calendar years, respectively.¹²³ In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service

¹¹⁹ See Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824 paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

¹²⁰ See Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824 paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996).

¹²¹ See, e.g., Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 paras. 115-17 (1994).

¹²² FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997).

¹²³ 47 C.F.R. § 90.814(b)(1).

pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licenses in the 800 MHz and 900 MHz bands that may be affected by the rules and policies proposed herein.

53. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small entities specific to the Rural Radiotelephone Service.¹²⁴ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).¹²⁵ We will use the SBA's size standard applicable to wireless companies, *i.e.*, an entity employing no more than 1,500 persons.¹²⁶ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

54. *Fixed Microwave Services.* Microwave services include common carrier,¹²⁷ private-operational fixed,¹²⁸ and broadcast auxiliary radio services.¹²⁹ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a small business size standard specifically with respect to microwave services. For purposes of this Initial RFA, we utilize the SBA's size standard applicable to wireless companies--*i.e.*, an entity with no more than 1,500 persons.¹³⁰ We do not have data specifying the number of these licensees that have more than 1,500

¹²⁴ The service is defined in § 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

¹²⁵ BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules. 47 C.F.R. §§ 22.757, 22.759.

¹²⁶ 13 C.F.R. § 121.201, NAICS codes 513321, 513322, and 51333.

¹²⁷ 47 C.F.R. §§ 101, *et seq.* (formerly Part 21 of the Commission's Rules).

¹²⁸ Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

¹²⁹ Auxiliary Microwave Service is governed by Part 74 of the Commission's rules. See 47 C.F.R. Part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations and are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹³⁰ 13 C.F.R. § 121.201, NAICS codes 513321, 513322, and 51333.

employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the proposed rules. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

55. *39 GHz Licensees.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹³¹ An additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹³² The SBA approved these regulations defining "small entity" in the context of 39 GHz auctions.¹³³ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

56. We do not intend that any proposal we may adopt pursuant to this *Notice* will increase existing reporting, recordkeeping or other compliance requirements.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

57. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹³⁴

¹³¹ See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, Report and Order, 12 FCC Rcd 18600 (1997).

¹³² *Id.*

¹³³ See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

¹³⁴ 5 U.S.C. § 603(c).

58. The overall objective of this proceeding is to evaluate whether changes are necessary in the current default rate of compensation for dial-around calls originating at payphones, in order to ensure that payphone service providers are fairly compensated, promote payphone competition, and promote the widespread deployment of payphone services. The *Notice* seeks comment on specific issues related solely to the level of dial-around compensation.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

59. None.

B. Comment Filing Procedures

60. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹³⁵ interested parties may file comments within 30 days after publication of this *Notice* in the Federal Register and may file reply comments within 15 days after the date for filing comments. All filings should refer to **WC Docket No. 03-225**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹³⁶ Comments filed through ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is **WC Docket No. 03-225**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form<your e-mail address.>" A sample form and directions will be sent in reply.

61. Parties that choose to file comments or reply comments by paper must file an original and four copies of each, and are hereby notified that effective December 18, 2001, the Commission's contractor, Natek, Inc., receives hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. In addition, this is a reminder that, effective October 18, 2001, the Commission discontinued receiving hand-delivered or messenger-delivered filings for the Secretary at its headquarters location at 445 12th Street, SW, Washington, DC 20554.

¹³⁵ 47 C.F.R. §§ 1.415, 1.419.

¹³⁶ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

62. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission's headquarters is delivered to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method...	It should be addressed for delivery to...
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12 th Street, SW Washington, DC 20554

63. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, at the filing window at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, **WC Docket No. 03-225**), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy -- Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554.

64. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com.

65. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules.¹³⁷ We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

C. *Ex Parte* Presentations

66. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.¹³⁹ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

67. Alternate formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This *Notice* can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/cch/cpd>.

D. Initial Paperwork Reduction Act Analysis

68. This *Notice* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

69. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street SW, Washington, DC

¹³⁷ See 47 C.F.R. § 1.48.

¹³⁸ 47 C.F.R. §§ 1.1200-1.1216.

¹³⁹ See 47 C.F.R. § 1.1206(b)(2).

20554, or via the Internet to jboley@fcc.gov, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW, Washington, DC 20503, or via the Internet to Kim_A._Johnson@omb.eop.gov.

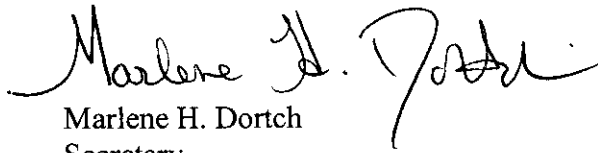
VI. ORDERING CLAUSES

70. Accordingly, IT IS ORDERED that the Petitions for Rulemaking filed by APCC and the RBOC Payphone Coalition ARE GRANTED as set forth herein.

71. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i)-4(j), 201, 226 and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 201, 226, 276, this Notice of Proposed Rulemaking IS ADOPTED.

72. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

The Federal Communications Commission proposes to amend 47 C.F.R. Part 64 as follows:

§ 64.1301 Per-payphone compensation obligation.

* * *

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$ ____.